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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/560,172	11/30/2006	Yoji Kameo	283020US0CT	1452
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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER PADEN, CAROLYN A	
			ART UNIT	PAPER NUMBER
			1781	
			NOTIFICATION DATE	DELIVERY MODE
			02/17/2011	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/560,172

Applicant(s)

KAMEO ET AL.

Examiner

Carolyn A. Paden

Art Unit

1781

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 January 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 5-26, 28 and 29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 5-26, 28, 29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-945)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4-26 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kawasaki (JP-1996-08266211 translation) as further evidenced by Swern and "Turning the Heat Up on Crisco (and Lard)" and in view of Ratka (6,919,098) and further in view of Kuhrt (3,034,898).

Kawasaki discloses a bread quality improver comprising edible oil, emulsifiers and protein powder (paragraph 6). Exemplary compositions are disclosed containing 59-74% rapeseed salad oil, which possesses the fatty acid composition required (as evidenced by Swern at page 416), about 26% of lecithin and glycerol fatty acid ester as emulsifiers, and about 6-10% of a humectant protein (Table 1). The ratio of oil (A) to emulsifier (B) in these examples is about 2.25-2.8.

Regarding claim 5, Kawasaki discloses the fat and oil composition of claim 1, but does not disclose the degree of penetration for the composition.

Regarding claim 7, Kawasaki discloses producing Pullman bread comprising per 100 parts flour, 2 parts of the bread quality improver as in claim 1, and 5 parts of shortening (fat) (paragraph 21). As evidenced by 'Turning the heat up on Crisco (and Lard)', common shortenings possess melting points within the claimed range.

Regarding claim 11, Kawasaki discloses bread of claim 7. The bread prepared using the fat composition (paragraph 22) and is further sliced in paragraph 23.

Regarding claims 12, 15, 16, Kawasaki discloses a bread composition comprising per 100 parts flour, 2 parts of the bread quality improver as in claim 1, and 5 parts of shortening (paragraph 21). As seen in 'Turning the heat up on Crisco (and Lard)', common shortenings possess melting points within the claimed range. Kawasaki discloses the use of the bread improver in breads comprising about 5 parts sugar per 100 parts of flour. The breads disclosed in Kawasaki are Pullman type breads, which are generally known in the art to be relatively non-sweet, sandwich loaves. However, it is well known in the art to produce sweet-breads comprising higher levels of sugar and shortening, and it would have been obvious to one having ordinary skill in the art at the time of the invention to produce a sweetened bread using

the bread improver of Kawasaki, as the incorporation of the quality improver in breads allows preservation of the breads flavor and texture, even after multiple days of storage (paragraph 22).

Regarding claims 17, 19, Kawasaki discloses a bread composition comprising per 100 parts flour, 2 parts of bread quality improver as in claim 1, 5 parts of sugar, and 5 parts of shortening (paragraph 21). As evidenced by 'Turning the heat up on Crisco (and Lard)', common shortenings possess melting points within the claimed range. Although the level of shortening present in the types of bread produced by Kawasaki is lower than claimed, it is well known in the baking art to produce brioche-type breads, which are enriched by high levels of shortening. As the bread improver of Kawasaki allows preservation of the breads flavor and texture, even after multiple days of storage (paragraph 22), it would have been obvious to one having ordinary skill in the art at the time of the invention to include the bread improver in highly shortened bread, such as brioche. Regarding claims 24 and 26, brioche is known within the art as a cake-type product and would be expected to have the claimed properties.

Regarding claims 20-22 Kawasaki discloses a bread composition comprising per 100 parts flour, 2 parts of the bread quality improver as in

claim 1, 5 parts of sugar, and 2.2 parts yeast (paragraph 21). Kawasaki discloses immediate baking of the bread. However, within the baking art, it is well known to freeze finished dough in order to provide a bakery product that can be freshly baked by the consumer. The level of yeast disclosed in Kawasaki is slightly lower than the claimed 3 parts yeast; however, one having ordinary skill in the bread-baking art at the time of the invention would find it obvious to adjust the quantity of yeast used in order adjust the texture and rise of the bread as a matter of routine skill in the art.

The claims appear to differ from Kawasaki as further evidenced by Swern and Crisco in the recitation of the use of the specific emulsifier composition having 80% glycerin fatty monoester and propylene glycol fatty monoester in a specific ratio.

Kuhrt teaches mixed partial ester compositions for foods that include glycerin fatty acid monoesters and propylene glycol (1,2-propanediol) fatty acid monoesters. In example 30, a 1:1 ratio of 1,2 propanediol mono ester:monoglycerides was prepared and used in a bread formulation in examples 30 and 31. The bread was found to retain the softness of fresh bread for extended periods of time. The bread was tested with a penetration

tester and found to have a degree of penetration that falls within the range mentioned in claims 5. Although Kawasaki does not disclose the stress of the bread upon 50% compression after 3 days storage at 20 °C in N₂, one having ordinary skill in the art would expect the bread of Kawasaki with the emulsifiers of Kuhrt to possess the same physical properties, including the stress of the bread upon compression as that of the claims.

In examples 32-33, a 1:1 ratio of 1,2 propanediol monoester: monoglyceride was prepared and used in a cake formulation. The cake was found to have improved porosity.

Kuhrt is relied upon to show that it is known in the art to use propylene glycol monoesters and monoglycerides as an alternative to lecithin and monoglycerides in foods, bakery products, bread and cakes. It would have been obvious to one of ordinary skill in the art to include the propylene glycol monoester/monoglyceride composition of Kuhrt in the fat composition of Kawasaki as a substitute for lecithin and other emulsifiers to improve the softness and texture of the bakery product.

It is appreciated that Kawasaki does not mention thickening polysaccharides as humectants. Applicant describes thickening polysaccharides in the specification on pages 9-10 as including xanthan gum,

locust bean gum and guar gum. Ratka teaches that hydrocolloids, such as Xanthan gum, guar gum and locust bean gum are useful to increase the moisture content of the dough. Ratka teaches scoopable dough as a way to prepare biscuits, dumplings, bread, coffee cake and the like. The scoopable dough includes the ingredients needed to prepare the dough (abstract). These ingredients include flour, a protein supplement, shortening, humectant and a leavening ingredient (claim 1). Emulsifiers are disclosed at column 9, lines 27-39 to influence texture and the homogeneity of the dough and also to improve the eating quality of a baked product. Emulsifiers contemplated include lecithin, monoglyceride and diglycerides, propylene glycol monoesters as well as other emulsifiers. The composition is prepared by combining the solid components together and then blending in the liquid components. The solid components would be expected to include shortening and emulsifiers. It would have been obvious to include the hydrocolloids of Ratka in Kawaski for this reason.

Applicants' arguments and declaration filed January 13 have been considered but is not persuasive. Kuhrt teaches that it is known in the art to use combinations of propylene glycol monoesters and monoglycerides in the ratios of the claims and declaration to improve the soft texture of bakery product, especially a bread product.

Claims 24-26, 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gupta (3,622,345) as further evidenced by Ratka (6,919,098) for reasons of record.

Gupta discloses shortening composition with oil, glycerol monoester and propylene glycol monoester in the amounts of the claims (column 5, lines 60-70). The shortening is used to prepare cakes (column 7, lines 30-73). The claims appear to differ from Gupta in the recitation of a humectant. Ratka teaches that sugar or sucrose is a humectant (column 7, line 24-45). Sugar is also well known in the art as a sweetener. It would have been obvious to one of ordinary skill in the art to expect some of the sugar in Gupta to also act as humectant in the cake of Gupta. It is appreciated that the water content of the cake is not mentioned but the baking in Gupta would be expect to lower the level of water to the desired level of the claims.

The claims also appear to differ in the recitation of the particular ratio of glycerol monoester to propylene glycol monoester. It would have been obvious to one of ordinary skill in the art to adjust the ratio of glycerol monoester to propylene glycol monoester according to according the particular texture desired in the final product.

The declaration has been considered but is not seen to overcome the rejection because the declaration is directed to a bread product and not to a cake product. Further the declaration suggests that some testers like breads with different ratios of fatty acid monoester to propylene glycol monoester. It would have been obvious to adjust the ratio of the glycerol monoester to propylene glycol monoester to taste.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art further shows the state of the art relating to shortening compositions with emulsifiers.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached by dialing 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on

access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Carolyn Paden/

Primary Examiner 1781